

LAFCO *of Monterey County*

LOCAL AGENCY FORMATION COMMISSION

P.O. Box 1369 132 W. Gabilan Street, Suite 102

Salinas, CA 93902 Salinas, CA 93901

Telephone (831) 754-5838 Fax (831) 754-5831

www.monterey.lafco.ca.gov

KATE McKENNA, AICP
Executive Officer

DATE: September 28, 2009

TO: Chair and Members of the Formation Commission

FROM: Kate McKenna, AICP, Executive Officer

SUBJECT: **DRAFT WORK PROGRAM FOR DEVELOPMENT OF
AGRICULTURAL LAND BUFFER POLICIES**

SUMMARY OF RECOMMENDATIONS:

The Sphere of Influence and Annexation Policy Committee recommends that the Commission approve this work program, and direct the Executive Officer to proceed with the tasks and schedule.

EXECUTIVE OFFICER'S REPORT:

Overview

As part of the annual LAFCO work program, the Executive Officer was directed to "research and develop draft agricultural land buffer policies for consideration by LAFCO, in coordination with LAFCO's Sphere of Influence and Annexation Policy Committee, and with public participation."

At a noticed public meeting on September 14, the LAFCO Sphere of Influence and Policy Committee considered and recommended approval of a draft work program to develop agricultural buffer policies. The work program includes a legal analysis prepared by General Counsel Leslie Girard, examples of preliminary policy concepts, a public participation component, a process for complying with the California Environmental Quality Act, a process and a schedule.

After the work program is approved by the full Commission, staff will prepare draft policy language. The draft policies will be considered at future public meetings of the Policy Committee and full Commission. All interested parties will receive direct notice and be invited to participate in these meetings, tentatively planned for December 2009 and February 2010.

Sphere of Influence and Annexation Policy Committee

The Sphere of Influence and Annexation Policy Committee is composed of Public Member Vince DiMaggio (Chair), County Member Louis Calcagno, and City Member Dennis Donohue.

At its meeting of September 14, the Committee received the Executive Officer's prepared report and heard oral reports from the Executive Officer and General Counsel. The Committee discussed a range of issues including the authority and responsibilities of LAFCO under State law, the importance of buffers to the agricultural industry, the distinctions between buffers and growth limitations, the differences between permanent and short term buffers, and examples of buffers in Monterey County.

In attendance were nine members of the public, including a City representative and agricultural and environmental representatives. Members of the public were invited to comment and declined to do so at the time.

Following the close of the public comment portion of the agenda, the Committee unanimously recommended that the Commission approve the draft work program.

Purpose of Agricultural Land Buffers

Cities and the County of Monterey address the issue of agricultural land buffers as part of local land use, development and subdivision processes. Buffers are primarily intended to protect agricultural growers from the impacts of urban development, including litter, pests, theft/vandalism, increased liability, farm restrictions, and the loss of profit. Buffers also shield urban uses from the impacts of pesticides, noise, dust, smoke, lights, and farm traffic. Examples of buffer designs include a road, field, storm drain retention pond, wall, setback, parking lot or landscaped berm. Buffer features may be designed for temporary protection or for long term protection for the foreseeable future. Buffers are generally placed on the property to be developed, rather than on the adjacent agricultural lands.

Local jurisdictions may determine that temporary buffers are useful when future development is anticipated beyond the buffer area's planned location. Some temporary buffers may be considered "rolling" buffers, moving outward as cities or unincorporated communities reach certain growth thresholds and expand their boundaries. Depending on the design, temporary buffers that no longer function to protect agricultural uses may continue to serve useful purposes (such as roads and greenbelts) or may be redeveloped for urban uses.

Local jurisdictions may design some buffers to provide long term protection for the foreseeable future. Generally these types of buffers will feature wide natural or planted areas or large permanent human-made or topographical barriers that clearly demarcate formal urban growth lines. Buffers intended to be in place for the foreseeable future may include a "non-access" easement that prohibits the placement of public utilities, thereby preventing urban services from crossing the boundary. Often these buffers are secured by conservation easements between willing parties. Methods such as easements may have the consequence of re-directing or limiting growth, and may result in hopscotch patterns of urban sprawl if located in the desired long-term

direction of growth. The relationships between buffers, easements and direction of growth should be discussed and coordinated with all affected public agencies and property owners.

Analysis of the Authority of LAFCO to Adopt Policies Regarding the Establishment of Agricultural Buffers or Other Methods to Address the Preservation of Open Space and Agricultural Lands (Attachment 1)

The Cortese-Knox-Hertzberg Government Reorganization Act (Government Code 5600 et seq.) lists the preservation of open space and agricultural lands as one of the legislative purposes of a local agency formation commission.

At the request of the Executive Officer, LAFCO General Counsel Leslie J. Girard has prepared an analysis of the authority of the Commission to adopt policies, rules, regulations, guidelines or conditions regarding the establishment of "agricultural buffers" or other methods to address the preservation of open space and agricultural lands. He was also asked to express his thoughts about public participation in the process and about appropriate compliance with the California Environmental Quality Act. Please see Attachment 1 for Mr. Girard's report.

With respect to the question of how may the Commission address the preservation of open space and agricultural lands when rendering a decision on an annexation or Sphere of Influence amendment, General Counsel Girard provided the following short answer:

To address the preservation of open space and agricultural land, the Commission may not impose any condition that "would directly regulate land use density or intensity, property development, or subdivision requirements." However, the Commission has specific statutory authority to consider the affect of any change of organization or reorganization on open space or agricultural lands, and may make a decision based in part on how open space and agricultural lands are affected by a particular proposal. In addition, the Commission is authorized to adopt policies and procedures to govern the exercise of its powers, and such policies and procedures may provide guidance on the factors the Commission will consider when rendering a decision, including factors affecting the preservation of open space and agricultural lands.

Mr. Girard discusses the rules of interpretation, the Commission's authority to provide for the preservation of open space and agricultural land, that the Commission may not directly regulate land use, and that the Commission may take into account how a proposal will affect open space and agricultural land, and may adopt policies that provide guidance on what factors it will consider in that regard. By way of example only, he suggests acceptable policy language.

The analysis concludes that:

The plain language of the [Cortese-Knox-Hertzberg Local Government Reorganization] Act prohibits the Commission from imposing conditions on a decision that directly control land use. The intent of the legislature was clearly to give the Commission the ability to consider the impact of a proposal on the

preservation of open space and agricultural lands. The Commission may adopt policies that lay out what factors it will consider in reaching a decision, and what methods may be utilized by an applicant in addressing the preservation of open space and agricultural land. How an application addresses those issues is left to the applicant.

Adopted LAFCO Policies

LAFCO of Monterey County has adopted policies regarding the preservation of agricultural land. The policies are in two documents: the *Standards for the Evaluation of (Annexation) Proposals*¹ (Revised 1992) and the *Sphere of Influence Policies and Criteria* (Revised 2006). An earlier document, the *Agricultural Lands Preservation Policy* (1979), was the source for most of the agricultural preservation policies in the two core documents. Please see Attachment 2 for a list of all relevant adopted policies.

Adopted policies discourage proposals that facilitate the premature intrusion of urban-type developments into a predominantly agricultural area. The policies also discourage proposals that may allow, or lead to, the conversion of prime agricultural land to uses other than open-space.

The term "buffer" does not appear in LAFCO's *Sphere of Influence Policies and Criteria*. The term appears only once in the *Standards for the Evaluation of (Annexation) Proposals* and only once in the *Agricultural Lands Preservation Policy*. Buffer language is identical in both of the documents. The language states that the Commission should determine "whether natural or man-made barriers would serve to buffer the proposal area from existing urban uses" when considering a proposal that would lead to the conversion of agricultural or open space to urban uses. [*Standards for the Evaluation of Proposals*, page 9; *Agricultural Lands Preservation Policy*, page 4].

In summary, adopted policies discourage the premature intrusion of urban development into an agricultural area and discourage the conversion of prime agricultural land. Adopted policies also require LAFCO to consider whether adequate agricultural buffers exist for a proposed change of organization (annexation) or reorganization. There is no specific buffer policy for the review of proposed Sphere of Influence amendments.

Historical Practices for Protection and Buffering of Agricultural Lands

As part of its consideration of Sphere of Influence and annexation proposals, LAFCO of Monterey County considers how agricultural lands will be protected and buffered from proposed urban uses. The Commission bases its policy analysis and determinations on consideration of the law (see above discussion), adopted policies (see above discussion), the policies and implementing regulations of local jurisdictions, City-County growth agreements, and the information contained in Sphere and annexation proposals.

¹ "Standards for the Evaluation of Proposals" lists LAFCO policies relating to a change of organization (annexation) or reorganization. These standards are not applied to Spheres of Influence.

L:\LAFCO\2009\Meetings\092809\8.a Ag Buffer Policy 092809.doc

Protection and buffering of agricultural lands are land use responsibilities of cities and the County of Monterey. Therefore, as part of its analysis, the Commission considers how local jurisdictions address this issue in General Plan policies and implementing regulations. Some cities have a long history of agricultural land protection and buffers. Others are moving in this direction as part of recent or current General Plan updates. The following example is from the City of Salinas' General Plan: *"Encourage the provision and maintenance of buffers, such as roadways, topologic features, and open space, to prevent incompatibilities between agricultural and non-agricultural land uses. A number of factors shall be used to determine the appropriate buffer, including type of agricultural use, topography, and pesticide and machinery use, among others."* The adopted Monterey County General Plan also contains significant policies for agricultural land protection, including buffers. Additional buffer policy language is proposed as part of the draft County General Plan ("GPU 5"):

- Details of required buffers are more specific, including the factors to be taken into consideration in establishing a buffer;
- Buffers are required to be on the land designed for the new use unless by mutual agreement between the two landowners;
- Buffer maintenance is required;
- The use of non-permanent buffers is allowed, and
- The County's Agricultural Advisory Committee is given the authority to review and recommend changes to currently established buffer zones. (Although the draft General Plan has not yet been adopted, the County has already started to refer County agricultural policies and practices, including agricultural land buffers, to the Agricultural Advisory Committee.)

In addition to considering the policies of local jurisdictions, the Local Agency Formation Commission's practice is to give great weight to the terms of any City-County agreement. State law requires each city to negotiate growth issues with the County, before the city submits a Sphere of Influence proposal to LAFCO. The law encourages, but does not require, the two parties to reach agreement. If agreement can be reached and the terms include the protection of agricultural and open space lands, the Commission must consider and give great weight to those provisions. The Greater Salinas Area Memorandum of Understanding is a model City-County agreement.

LAFCO also considers agricultural buffers that are submitted as part of Sphere and annexation proposals. The Meyer and Mills Ranch (King City) and Creekbridge/Rava (Greenfield) developments have model buffers in this category.

Another LAFCO practice is to condition a Sphere of Influence proposal to require a Memorandum of Agreement to address the impacts of growth, including agricultural land buffers. LAFCO exercised this approach with the City of Greenfield Comprehensive Sphere of Influence amendment of 2007. Conducting negotiations after the Sphere is amended has been difficult to accomplish, in spite of good-faith efforts by the parties (City, County and LAFCO). A November 2007 public draft of the Greater Greenfield Area Agreement describes a set of standards for the location of permanent or interim buffers, required buffer widths, the use of

buffers within city limits, the use of conservation easements, and the elimination of buffers when they are no longer needed. A revised draft agreement is under review at this time.

Preliminary Concepts for the Development of Agricultural Land Buffer Policies

This section of the work program explores examples of preliminary policy concepts in the context of the legal analysis (Attachment 1). The legal analysis describes limits to policy concepts for preserving open space and agricultural lands. Within the limits, some policy concepts will be acceptable and others will not be acceptable.

Why explore policy concepts as part of the draft work program? The objective is to encourage policymakers to discuss ideas and provide early direction to staff. Based on that direction, staff will develop specific draft policy language after the work program is adopted, and will present the language for consideration at future meetings of the Sphere of Influence and Annexation Policy Committee and Commission.

In his analysis, General Counsel Girard advises the Commission not to require the imposition of any specific means to achieve the preservation of open space and agricultural lands. While LAFCO cannot dictate the means, it can adopt policies that put applicants on notice that preservation of open space and agricultural lands is an important consideration. LAFCO can offer ideas on how those issues may be addressed. LAFCO should not explore such policy concepts as the appropriate width of buffers, the relative advantages of long term and interim buffers, and the process for moving buffers over time as growth thresholds are met.

General Counsel Girard offers the following example of an acceptable policy concept:

Applications for annexations [or Sphere of Influence amendments] should discuss how a proposal balances the state interest in the preservation of open space and agricultural lands against the need for development and orderly growth. In considering an application for annexation, the Commission will consider the impact of the proposal on any adjacent open space, agricultural or prime agricultural land. Proposals that could reasonably induce conversion of open space, agricultural or prime agricultural lands should include measures designed to minimize such impacts. Acceptable measures could include the establishment of buffers by way of easements, dedications, zoning or other means. Agreements with adjacent local agencies regarding the preservation of open space and agricultural land are encouraged, and may be made a condition of approval.

This example relates broadly to the preservation of open space and agricultural lands. The concept calls for discussion of how a proposal addresses the Commission's State mandate. It encourages City-County agreements (preferably before a proposal is submitted to LAFCO, but as a condition of approval if necessary). It does not specifically require buffering, and does not specify the width or location of buffers. It does suggest that buffers are one means to accomplish the Commission's mandate.

Policy concepts that relate more specifically to buffers may be crafted, provided that they do not impose specific requirements and are based on the authority granted to LAFCO by state law. For example, in addition to the above draft policy language, the concepts could state that agricultural land buffers shall promote the continued productivity and sustainability of agricultural lands. Policy language could acknowledge that buffers may include roads and other major features, and that buffers can be designed for long term protection or as interim features that may be eliminated or moved outward as urban growth thresholds are met.

General Counsel Girard suggests this example of a more detailed agricultural preservation policy concept:

It is the policy of the Commission that applications or proposals for a change in organization or reorganization, or for the establishment or any change to a sphere of influence or urban service area (hereinafter, "Proposal" or "Proposals"), shall provide for planned, well-ordered, efficient urban development patterns with appropriate consideration of preserving open-space and agricultural lands within those patterns. (Government Code section 56300 (a) (the Cortese – Knox – Hertzberg Local Government Reorganization Act of 2000 or the "Act").) To implement this policy, it is the further policy of the Commission that:

1. A Proposal must discuss how it balances the state interest in the preservation of open space and prime agricultural lands against the need for orderly development. (Government Code section 56001.) Proposals that fail to discuss this balance, in the opinion of the executive officer, will be deemed incomplete. Proposals may be denied if they fail to demonstrate to the satisfaction of the Commission that the need for orderly development is balanced against the preservation of open space and prime agricultural lands.

2. A Proposal must discuss its effect on maintaining the physical and economic integrity of agricultural lands. (Government Code section 56668 (a).) Proposals that fail to discuss their effect, in the opinion of the executive officer, will be deemed incomplete. Proposals may be denied if they fail to demonstrate to the satisfaction of the Commission that the physical and economic integrity of agricultural lands is maintained.

3. A Proposal must discuss whether it could reasonably be expected to induce, facilitate, or lead to the conversion of existing open-space land to uses other than open-space uses. (Government Code section 56377.) Proposals that fail to discuss potential conversion, in the opinion of the executive officer, will be deemed incomplete. Proposals may be denied if they fail to demonstrate to the satisfaction of the Commission that: a) they guide development or use of land for other than open-space uses away from existing prime agricultural lands in open-space use and toward areas containing nonprime agricultural lands (Government Code section 56377 (a)); and b) development of existing vacant or nonprime agricultural lands for urban uses within the existing jurisdiction of a local agency or within the sphere of influence of a local agency will occur prior to the development of existing

open-space lands for non-open-space uses which are outside of the existing jurisdiction of the local agency or outside of the existing sphere of influence of the local agency (Government Code section 56377 (b)).

4. A Proposal must, if applicable, provide for pre-zoning (Government Code section 56375 (a)), and must demonstrate that it is consistent with the General Plans and Specific Plans of the existing local agency and any immediately adjacent local agency (Government Code sections 56375 (a) and 56668 (g)). Proposals may be denied if they are not consistent with such plans, or, if not pre-zoned, if the Proposal does not demonstrate to the satisfaction of the Commission that the existing development entitlements are consistent with the local agency's plans.

To further these policies, it is the position of the Commission that agricultural buffers provide the best means to preserve open-space and agricultural lands. Such buffers may be permanent, temporary, or rolling, and may take many forms; easements, dedications, appropriate zoning, streets, or parks, for example. How agricultural buffers are used to further the state policy of preserving open-space and agricultural lands within patterns of planned, well-ordered, efficient urban development is left to the discretion of each local agency; however, Proposals will be judged on how state-wide policies under the Act, and Commission adopted policies, with respect to the preservation of open-space and agricultural lands are furthered. Agreements between neighboring local agencies with regard to the preservation of open-space and agricultural lands are encouraged, and such agreements may be adopted as a condition of approval, or be required as a condition precedent to approval.

In summary, the Commission has the authority to supplement its adopted policies with additional policies that respect legal parameters and processes.

Public Participation

All proceedings of the Sphere of Influence and Annexation Policy Committee and the Local Agency Formation Commission include opportunities for public participation and comment. The Policy Committee's September 14 agenda and report were posted and distributed to known stakeholders and interested parties. The Commission's September 28 agenda and report were also distributed to stakeholders and interested parties. A complete list is available. Additional names will be added upon request.

Public notice of all future Commission and Committee meetings, agendas and reports, including draft policy language, will be provided in accordance with the law. Direct notice will be provided to all interested parties and stakeholders throughout the process.

On September 23, LAFCO Executive Officer McKenna attended a meeting of the Central Coast Agricultural Task Force (representing 10 agricultural organizations) to discuss the proposed work program and public participation process.

California Environmental Quality Act Compliance

As described in the legal analysis prepared by General Counsel Girard, a proposal for agricultural land buffer policies is subject to analysis under the California Environmental Quality Act. The specific policies may be found exempt from analysis if they solely lay out general considerations for a Commission decision. If policies require specific actions, the Commission's action will more likely require CEQA review.

Work Program Tasks and Schedule

Following are the recommended tasks and schedule for development of agricultural land buffer policies:

1. Sphere of Influence and Annexation Policy Committee meeting to consider draft work program: September 14, 2009 [completed]
2. Local Agency Formation Commission meeting to consider and act on the draft work program: September 28, 2009
3. Sphere of Influence and Annexation Policy Committee meeting to consider and recommend draft policies and CEQA determination, with an invitation to key stakeholders to participate in the meeting: December 2009
4. LAFCO public hearing to consider and act on draft policies and the CEQA determination: February 2010

ALTERNATIVE ACTIONS:

The Commission may direct changes to the draft work program content, tasks or schedule.

Respectfully Submitted,



Kate McKenna, AICP
Executive Officer

Attachment 1: Legal Analysis Prepared by LAFCO General Counsel Leslie J. Girard, September 3, 2009

Attachment 2: Excerpts from LAFCO of Monterey County's Adopted Agricultural Land Preservation Policies

cc: Distribution List of Stakeholders and Interested Parties

Attachment 1.

**Legal Analysis Prepared by LAFCO General Counsel Leslie J. Girard
September 3, 2009**

LAFCO *of Monterey County*

LOCAL AGENCY FORMATION COMMISSION

P.O. Box 1369

132 W. Gabilan Street, Suite 102

Salinas, CA 93902

Salinas, CA 93901

Telephone (831) 754-583

Fax (831) 754-5831

www.monterey.lafco.ca.gov

LESLIE J. GIRARD

General Counsel

REPORT TO THE EXECUTIVE OFFICER OF THE LOCAL AGENCY FORMATION

COMMISSION OF MONTEREY COUNTY

RE: AUTHORITY OF THE COMMISSION TO ADDRESS THE
PRESERVATION OF OPEN SPACE AND AGRICULTURAL LANDS

DATE: September 3, 2009

FROM: Leslie J. Girard, General Counsel

INTRODUCTION

Significant debate exists concerning the authority of a local agency formation commission ("LAFCO") to adopt policies, rules, regulations, guidelines, or conditions regarding the establishment of "agricultural buffers" or other methods to address the preservation of open space and agricultural lands. I have been asked for a legal analysis of the authority of the LAFCO of Monterey County (the "Commission") to adopt any such policies, rules, regulations, guidelines, or conditions. I have also been asked to express my thoughts about appropriate compliance with the California Environmental Quality Act ("CEQA") and public participation in any process to consider that adoption of policies, rules, regulations, guidelines, or conditions.

QUESTION PRESENTED

How may the Commission address the preservation of open space and agricultural lands when rendering a decision on a change in organization or reorganization, or regarding a sphere of influence?

SHORT ANSWER

To address the preservation of open space and agricultural land, the Commission may not impose any condition "that would directly regulate land use density or intensity, property development, or subdivision requirements." However, the Commission has specific statutory authority to consider the affect of any change of organization or reorganization on open space or agricultural lands, and may make a decision based in part on how open space and agricultural

lands are affected by a particular proposal. In addition, the Commission is authorized to adopt policies and procedures to govern the exercise of its powers, and such policies and procedures may provide guidance on the factors the Commission will consider when rendering a decision, including factors affecting the preservation of open space and agricultural lands.

BACKGROUND

Senior Analyst Thom McCue has provided me with some background concerning the previous efforts of the Commission to establish policies regarding agricultural buffers. In summary, two previous attempts at establishing a formal policy met with significant debate on both sides of the issue, and policies were never adopted. However, the Commission has conditioned changes in organization or reorganization, and actions regarding spheres of influence, with the establishment of agricultural buffers, but in those cases the interested parties were in agreement. In another case, the condition was for the negotiation of an agreement which could include the establishment of an agricultural buffer.

The current Commission Work Program was recently amended to include the research and development of agricultural land buffer policies, which would be considered by the Commission first through the Sphere of Influence and Annexation Policy Committee.

Mr. McCue also provided me with numerous materials that describe the variety of forms that agricultural buffers may take, including physical barriers such as walls or streets, and intangible barriers such as easements or dedications. He has also provided me information on the efforts of other LAFCOs to adopt policies governing agricultural buffers, some successful, some not.

DISCUSSION

1. Rules of Interpretation.

The analysis required to address this issue consists primarily of the interpretation of statutes, in this case the Cortese - Knox - Hertzberg Local Government Reorganization Act (the "Act"), California Government Code section 56000 et seq.² The Act is the governing statute for the creation of LAFCOs and the exercise of their powers.

Statutes should be interpreted so as to effect the intent of the legislature and the purpose of the statute. *Dyna-Med, Inc. v. Fair Employment & Housing Commission*, 43 Cal. 3d 1379, 1386-1387 (1987); *Moyer v. Workman's Compensation Appeals Board*, 10 Cal. 3d 222, 230 (1973). If the words of the statute are clear, no interpretation or construction is necessary, and the plain language should be given effect. *Solberg v. Superior Court*, 19 Cal. 3d 182, 198 (1977).

[The statute] must be given a reasonable and common sense interpretation consistent with the apparent purpose and intention

² Unless otherwise indicated, all references are to the California Government Code.
L:\LAFCO\2009\Meetings\092809\8.a Ag Buffer Policy 092809.doc

of the lawmakers, practical rather than technical in nature, which upon application will result in wise policy rather than mischief or absurdity. [Citations.] Significance, if possible, should be attributed to every word, phrase, sentence and part of an act in pursuance of the legislative purpose, as "the various parts of a statutory enactment must be harmonized by considering the particular clause of section in the context of the statutory frameworks as a whole." [Citation.] "The court should take into account matters such as context, the object in view, the evils to be remedied, the history of the times and of legislation upon the same subject, public policy, and contemporaneous construction." [Citation.]

DeYoung v. City of San Diego, 147 Cal. App. 3d 11, 18 (1983). A specific intent controls a general intent if the two conflict. Code of Civil Procedure section 1859; Civil Code section 3534. Statutes should be construed so as to harmonize rather than raise conflicts. *Woodward v. Southern California Permanente Medical Group*, 171 Cal. App. 3d 656, 664 (1985). "Interpretation which gives effect is preferred to one which makes void." Civil Code section 3541. With these principles in mind, we turn to the question at hand.

2. The Commission Is Authorized To Provide For The Preservation Of Open Space And Agricultural Land.

As a preliminary matter, it must be determined whether the Commission may even consider the preservation of open space and agricultural lands in rendering decisions, and if so, in what context. The Act is replete with provisions that grant to a LAFCO the authority to consider and provide for the preservation of open space and agricultural lands. "Among the purposes of a [LAFCO] are discouraging urban sprawl [and] preserving open-space and prime agricultural lands, . . ." Section 56301. Furthermore, "[i]t is the intent of the Legislature that each commission, . . . , shall establish written policies and procedures and exercise its powers pursuant to this part in a manner . . . that encourages and provides planned, well-ordered, efficient urban development patterns *with appropriate consideration of preserving open-space and agricultural lands* within those patterns." Section 56300 (a) (emphasis added). The Legislature has also declared that the preservation of open-space and prime agricultural lands is a "state interest" to be balanced against the promotion of orderly development.³ Section 56001.

The Commission is specifically charged in some instances with protecting open space and agricultural land. For example, an island annexation may not be approved if the island consists of prime agricultural land. Section 56375.3 (b)(5). The Commission may not approve a

³ The Act uses both the terms "agricultural land" and "prime agricultural land" throughout its provisions. While there are definitional differences (compare Sections 56016 and 56064) it is worth noting that the definition of "open space land," which is always used concurrently with either "prime agricultural land" or "agricultural land," incorporates definitions in the local planning law provisions of the Government Code and includes "agricultural lands." See Sections 56059 and 65560. Thus, in my opinion, there is no distinction between "prime agricultural land" and "agricultural land" for the general purposes of pursuing their preservation through the Act.

L:\LAFCO\2009\Meetings\092809\8.a Ag Buffer Policy 092809.doc

change to a sphere of influence where the affected territory is subject to a farmland security zone or Williamson Act contract, unless certain conditions exist. Sections 56426 and 56426.5.

In other situations, the Commission is charged with considering specific circumstances affecting open space or agricultural land when making a decision. For example, when considering a proposal that could reasonably be expected to lead to the conversion of open space lands to non open space uses, the Commission must consider guiding such conversion away from prime agricultural land towards non prime lands. Section 56377s (a) and 56668 (d). In addition, the Commission should encourage the conversion of open space lands within the jurisdiction or sphere of influence of a local agency before approving any proposal that would lead to such conversion outside the jurisdiction or sphere of influence of that agency. Sections 56377 (b) and 56668 (d). Finally, the Commission must consider the "effect of [a] proposal on maintaining the physical and economic integrity of agricultural lands, . . ." Section 56668 (e).

The Commission has clear authority to consider the effect of a proposal on the preservation of open space and agricultural land.

3. The Commission May Not Directly Regulate Land Use.

While a LAFCO has considerable authority to provide for the preservation of open space and agricultural land, it may not directly regulate land use: "A commission shall not impose any conditions that would directly regulate land use density or intensity, property development, or subdivision requirements." Section 56375. A LAFCO may require that property sought to be annexed be prezoned, it may not specify how it shall be prezoned. *Id.*

Because this provision in the Act is specific, it will control over other, more general, provisions of the Act relating to the preservation of open space or agricultural land, but its effect will be limited by its specific terms and plain language.

4. The Commission May Take Into Account How A Proposal Will Affect Open Space And Agricultural Land, And May Adopt Policies That Provide Guidance On What Factors It Will Consider In That Regard.

The Act provides that the Commission shall not impose any *conditions* on a proposal that directly regulate land use, or require a specific prezone; the Act does not prohibit the Commission from considering the impact of a proposal on open space or agricultural lands nor from rejecting a proposal if the impacts are negative. In other words, the Commission may not affirmatively control land use through its decisions, but may make its decisions based, in part, on how land use considerations are impacted by the proposal.⁴

For example, if an annexation proposal is submitted that prezones open space immediately adjacent to prime agricultural land for medium density residential, the Commission may conclude that the annexation will not only lead to the conversion of existing open space

⁴ Indeed, another factor for Commission consideration is consistency with "city or county general and specific plans." Section 56668 (g). Presumably, these local agencies would have adopted plans that protect their respective interests in land use matters, but the Commission is authorized to consider how the proposal relates to them.
L:\LAFCO\2009\Meetings\092809\8.a Ag Buffer Policy 092809.doc

land, but could reasonably be expected to lead to the conversion of the prime agricultural land, and thus deny the application. In that circumstance, the Commission may not condition the proposal on a specific prezone; however, the impact of the proposal, including the nature of the prezone, on open space and agricultural land is a legitimate consideration for the Commission.

To assist applicants in this process, there is nothing in the Act that prohibits the Commission from adopting policies that set forth the variety of means to achieve the preservation of open space and agricultural lands. Such policies should not, in my opinion, require the imposition of any specific means to achieve such preservation; those decisions should be left to the applicant.

By way of example only, an acceptable policy might read:

Applications for annexations should discuss how a proposal balances the state interest in the preservation of open space and agricultural lands against the need for development and orderly growth. In considering an application for annexation, the Commission will consider the impact of the proposal on any adjacent open space, agricultural or prime agricultural land. Proposals that could reasonably induce conversion of open space, agricultural or prime agricultural lands should include measures designed to minimize such impacts. Acceptable measures could include the establishment of buffers by way of easements, dedications, zoning or other means. Agreements with adjacent local agencies regarding the preservation of open space and agricultural land are encouraged, and may be made a condition of approval.

This type of policy does not affirmatively and directly control land use, but serves to place applicants on notice that proposals must address the preservation of open space and agricultural lands, leaving the determination of the means either within the control of the applicant or the subject of agreement between affected agencies. In sum, as long as the means is not dictated by the Commission, policies that put applicants on notice that preservation of open space and agricultural land is an important consideration for the Commission, and that offer ideas on how those issues may be addressed, should be acceptable.

5. CEQA Compliance.

Discretionary actions of the Commission, which would include the adoption of policies, are subject to CEQA, unless exempted. There are several exemptions that may be applicable to the adoption of policies, but the specific policy should be developed before a determination can be made on what, if any, CEQA process is applicable. For example, a policy that imposes a blanket requirement for certain action on the part of an applicant probably needs CEQA review; a policy that lays out general considerations for a Commission decision probably does not. In any event, the safest course of conduct is to comply with the CEQA process if there is any question about the nature of the action to be taken by the Commission.

6. Public Participation.

The only requirement for public participation in the process of developing policies is compliance with the Brown Act. Outreach to and participation by interested members of the public can be accomplished by many means. For an example, the Commission could hold workshops with interested parties such as cities, the County of Monterey, and members of the agricultural and development communities. The Commission could form an ad hoc advisory committee made up of members of the interested groups to advise on specific language.

CONCLUSION

The plain language of the Act prohibits the Commission from imposing conditions on a decision that directly control land use. The intent of the legislature was clearly to give the Commission the ability to consider the impact of a proposal on the preservation of open space and agricultural lands. The Commission may adopt policies that lay out what factors it will consider in reaching a decision, and what methods may be utilized by an applicant in addressing the preservation of open space and agricultural land. How an application addresses those issues is left to the applicant.

Respectfully submitted:

Leslie J. Girard, General Counsel

LJG:ljg

cc: Senior Analyst Thom McCue

Attachment 2

**Excerpts from LAFCO of Monterey County's
Adopted Agricultural Land Preservation Policies**

ATTACHMENT 2

EXCERPTS FROM LAFCO OF MONTEREY COUNTY'S ADOPTED POLICIES RELATING TO AGRICULTURAL LAND PRESERVATION

[bold print has been added for emphasis]

Standards for the Evaluation of Proposals [for Changes in Organization or Reorganization]
(LAFCO of Monterey County, Revised December 1992):

- *"The Commission discourages proposals which will facilitate development that is not in the public interest due to ... premature intrusion of urban-type developments into a predominantly agricultural area..."* [page 7]
- *"... guide the provision of governmental services and development to areas other than those classified as prime agricultural land ... except where such development would promote the planned, orderly, and efficient development of that area."* [page 8]
- *"Boundary Changes proposals which would allow or likely lead to the conversion of prime agricultural land or other open space land to other than open space uses shall be discouraged by the Commission unless such an action would promote the planned, orderly, efficient development of an area, or the affected land use planning jurisdiction has accomplished the following:*
 - a. *Identified within its sphere of influence all "prime agricultural land" as defined under Government Code Section 56064.*
 - b. *Demonstrated to LAFCO that effective measures have been adopted to preserve for agricultural use prime agricultural land identified in (a). Such measures may include, but not be limited to, establishing agricultural preserves pursuant to the California Land Conservation Act; designating land for agricultural or other open space uses on that jurisdiction's general plan, adopted growth management plan, or applicable specific plan; adopting an agricultural element to its general plan; and undertaking public acquisition of prime agricultural land for the purpose of leasing back such land for agricultural use.*
 - c. *Prezoned pursuant to Government Code Section 56375 (a) (2), both territory within the agency's general planning area to be maintained for agricultural use and also territory within the annexation area to indicate anticipated level of development."* [pages 8-9]
- *"In reviewing a proposal which will lead to the conversion of agricultural or open space land to urban uses, the Commission will consider the following criteria to determine whether the proposed action would (a) adversely affect the agricultural resources of the community, or (b) not promote the planned, orderly, efficient development of an area: ...*
 - d. *Determination of:*
 - (1) *Whether public facilities would be extended through or adjacent to any other agricultural land to provide services to the development anticipated on the proposal property.*

- (2) *Whether the proposal area is adjacent to or surrounded by existing urban or residential development.*
- (3) *Whether surrounding parcels may be expected to develop to urban uses within the next five years.*
- (4) *Whether natural or man-made barriers would serve to buffer the proposal area from existing urban uses.” [page 9]*

- Sphere of Influence Policies and Criteria

(LAFCO of Monterey County, Revised October 2006):

- *“LAFCO intends that its sphere of influence determination will serve as a master plan for the future organization of local government within the County. The spheres shall be used to discourage urban sprawl; ... encourage efficiency, economy and orderly changes in local government; promote compact, community centered urban development; and **minimize adverse impacts on lands classified as prime agriculture.**” [page 4]*
- *“This Commission, in recognition of the mandated requirements for considering impacts on open space lands and agricultural lands, will develop and determine spheres of influence for Cities and urban service districts in such a manner as to promote the long-term preservation and protection of this County's "Resources." The Commission believes the public interest will be best served by considering "Resources" in a broad sense to include open space, recreational opportunities, wildlife, and agricultural land.” [page 5]*
- *“LAFCO shall consider the following factors in determining or amending an agency's sphere of influence:*
 - c. The existence of agricultural preserves, agricultural lands and open space lands in the area and the **effect that inclusion within a sphere of influence shall have on the physical and economic integrity of maintaining the land in non-urban use.** ...*
- *“Territory not in need of urban services, including ... agriculture ... shall not be assigned to an agency's sphere of influence unless the area's exclusion would impede the planned, orderly and efficient development of an area.” [page 7]*

- Agricultural Lands Preservation Policy

(LAFCO of Monterey County, Adopted November 27, 1979):

- *“In reviewing a proposal which will lead to the conversion of agricultural or open space land to urban uses, the Commission will consider the following criteria to determine whether the proposed action would (a) adversely affect the agricultural resources of the community, or (b) not promote the planned, orderly, efficient development of an area: ...*
 - d. Determination of:*
 - (5) *Whether public facilities would be extended through or adjacent to any other agricultural land to provide services to the development anticipated on the proposal property.*
 - (6) *Whether the proposal area is adjacent to or surrounded by existing urban or residential development.*

(7) *Whether surrounding parcels may be expected to develop to urban uses within the next five years.*

(8) *Whether natural or man-made barriers would serve to buffer the proposal area from existing urban uses.*" [Policy 3]

- *"The Commission shall discourage proposals that intrude on prime agricultural land when such intrusion would lead to the disruption of viable agricultural units and the encouragement of further urban development on such lands."*
[Policy 5]
- *"The Commission shall encourage proposals for land uses adjacent to prime agricultural land which would result in compatible uses, [such as] green belts, greenhouses, linear parks, light industry). Similarly, the Commission shall discourage proposals which would result in less compatible uses (e.g., residential and retail commercial uses)." [Policy 7]*